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9 Attorney for Respondent

10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF MONTANA  
12 MISSOULA DIVISION

13 SARENS USA, INC.,

14 Petitioner,

15 vs.

16 AMY LOWERY,

17 Respondent.

Civil Action No. \_\_\_\_\_

18 **CONSENT NOTICE OF  
19 REMOVAL**

20 The Respondent, Amy Lowery, hereby notifies the Court of the removal of  
21 the following action filed in the Montana Fourth Judicial District Court, Missoula  
22 County, on March 11, 2020: Sarens USA, Inc. v. Amy Lowery, Cause No. DV-32-  
23 2020-0000329-JR. Counsel for Petitioner has been contacted and consents to  
24 removal. The basis for removal is as follows:

1           1. Respondent is removing this case pursuant to 28 U.S.C. §§ 1441 and  
2 1446. The basis for this Court’s jurisdiction is diversity jurisdiction under 28  
3 U.S.C. § 1332, as the matter in controversy exceeds \$75,000 exclusive of interests  
4 and costs, and is between citizens of different states. The Ninth Circuit has  
5 determined that diversity jurisdiction is available in cases like this one involving  
6 petitions for review under the Montana Administrative Procedure Act. See BNSF  
7 Ry. v. O’Dea, 572 F.3d 785 (9<sup>th</sup> Cir. 2009).

8           2. This case involves Sarens’ petition for review of a decision of the  
9 Montana Human Rights Commission, Human Rights Case No. 0180086.  
10 Respondent Lowery was a resident of Missoula, Montana, but is now a resident of  
11 Downingtown, Pennsylvania, having relocated in 2018. Sarens USA, Inc.  
12 (“Sarens”) is a California corporation with its principal office in Houston, Texas,  
13 and an office in Missoula, Montana.

14           3. Lowery filed a complaint with the Montana Human Rights Bureau  
15 against Sarens on December 11, 2017. Lowery alleged that Sarens violated her  
16 rights under § 49-2-303, MCA, to be free from employment discrimination based  
17 on sex when she worked at Sarens’ Missoula office. Specifically, she alleged that  
18 she had been subjected to sexual harassment in the form of a hostile work  
19 environment. In addition, she alleged that she had been terminated in retaliation  
20 for reporting the harassment, in violation of § 49-2-301, MCA. The case was  
21 docketed as No. 0180086.

22           4. Montana Department of Labor and Industry Hearing Officer Caroline A.  
23 Holien held a contested case hearing on Lowery’s complaint on January 29 and  
24 30, 2019, in Missoula, Montana. Lowery sought damages including back pay with  
25 interest, front pay, and emotional distress damages, in the amount of \$259,771.

26           5. The Hearing Officer issued her Decision on September 20, 2019,  
27 granting judgment in favor of Lowery. She found that Lowery was subjected to  
28 sexual harassment and awarded \$50,000 in emotional distress damages. The

1 Hearing Officer also ordered Sarens to comply with certain affirmative relief  
2 designed to prevent future discrimination. The Hearing Officer determined that  
3 Lowery had not been terminated for complaining about the harassment. Thus the  
4 Hearing Officer did not award any lost wages stemming from Lowery's  
5 termination.

6 6. Both sides sought review by the Montana Human Rights Commission.  
7 After briefing and oral argument, the Human Rights Commission affirmed the  
8 Hearing Officer's Decision in its entirety. The Commission issued its Final  
9 Agency Decision on February 13, 2020.

10 7. Lowery filed a petition for review of the Commission's decision in the  
11 Montana First Judicial District Court, Lewis and Clark County, on March 10,  
12 2020. Lowery claims that the Hearing Officer erred in not awarding the full  
13 amount of damages she demanded, including lost wages. On March 31, 2020,  
14 Sarens removed the petition to federal court on the basis of diversity jurisdiction.  
15 It is now pending in the United States District Court for the District of Montana,  
16 Helena Division, Case No. 6:20-cv-00025-SEH.

17 8. Sarens filed the instant petition for review of the Commission order on  
18 March 11, 2020, in the Montana Fourth Judicial District Court, Missoula County.  
19 Sarens seeks reversal of the Commission's decision and also its fees and costs,  
20 including future fees and costs. Sarens claimed its fees and costs were \$70,000 as  
21 of March 2, 2020.

22 9. As the two petitions both seek review of the same Commission order, it  
23 is necessary that they be consolidated and reviewed by the same court. See  
24 Yellowstone County v. Drew, 2007 MT 130, ¶19, 337 Mont. 346, 160 P.3d 557.  
25 Thus, the parties have agreed to remove Sarens' petition in this matter to federal  
26 court. At the same time, the parties will request that Lowery's petition be  
27 transferred to the Missoula Division, so that both petitions may be consolidated  
28 and reviewed in the Missoula Division.



**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 14th day of April, 2020, a true and accurate copy of the foregoing was served by first class mail, postage prepaid, upon:

Micah Dawson  
Fisher & Phillips, LLP  
1801 California St., Suite 2700  
Denver, CO 80202

Human Rights Commission  
P.O. Box 1728  
Helena, MT 59624

Department of Labor and Industry – Legal Services Bureau  
P.O. Box 1728  
Helena, MT 59624

Office of the Attorney General for the State of Montana  
P.O. Box 201401  
Helena, MT 59620-1401

/s/ Philip A. Hohenlohe  
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